



#9

07 DEC 2006

Alan R Loudermilk
LOUDERMILK & ASSOCIATES
Post Office Box 3607
Los Altos CA 94024-0607

In re Application of
Georges et al.
Application No.: 10/541,536
PCT No.: PCT/US03/25813
Int. Filing Date: 08 August 2003
Priority Date: 07 January 2003
Attorney Docket No.: DBT004PCTUS1
For: Systems And Methods For Creating, Modifying,
Interacting With And Playing Musical Compositions

DECISION

This is a decision on the renewed submission under 37 CFR 1.497(d) filed on 28 September 2006.

DISCUSSION

In a decision mailed on 29 August 2006, in response to a renewed submission filed on 03 July 2006, the declaration filed on 07 February 2005 was not accepted under 37 CFR 1.497(d), without prejudice, because

Regarding the issue of Mr. Damevski's name, the proposed change from "Voit" as it appears on the published international application to "Voislav" as it appears in the declaration constitutes more than correction of a mere typographic error or phonetic misspelling. Accordingly, a proper petition (and fee) under 37 CFR 1.182 is required to effect this change. *See* MPEP § 605.04(b) and MPEP § 201.03(b). Petitioner has neither paid the petition fee nor explicitly requested treatment under 37 CFR 1.182. Therefore, the statement signed by Mr. Damevski does not in itself present sufficient basis to permit the requested name change.

The application was held to have become abandoned with respect to the national stage in the United States for failure to timely file an acceptable response within the time period set in the previous decision. In response, requests reconsideration because "the Declaration and Statement of Voislav Damevski ("Damevski Declaration") sufficiently establishes that this is the type of error that may be corrected in the circumstances of this case." However, as mentioned in the Decision mailed on 29 August 2006, relief under the circumstances presented requires a proper petition and fee under 37 CFR 1.182. While counsel's position that Voislav and Voit are related in much the same manner as "Will or Bill and William, and Bob or Rob and Robert" is understood, this type of discrepancy in the declaration is regarded as more than a mere typographic error or phonetic misspelling. Thus, under existing policy, acceptance of the declaration of record would require a grantable petition under 37 CFR 1.182 (alternatively, applicants could file a newly executed declaration showing the same names as appear on the published international application).

Counsel also in effect requests that the previous submission be regarded as a constructive petition under 37 CFR 1.182, stating that the request "was in substance a request or petition under Rule 1.182 to effect the change and pay the required fee. This, respectfully, is what was

intended by Applicant's previous submission, even though Applicant mistakenly did not reference by number Rule 1.182." However, it is respectfully submitted that the Decision mailed on 07 June 2006 specifically cited MPEP 605.04(b) and 201.03(b). MPEP 605.04(b) states in part that "Except for correction of a typographical or transliteration error in the spelling of an inventor's name, a request to have the name changed from the typewritten version to the signed version or any other corrections in the name of the inventor(s) will not be entertained, unless accompanied by a petition under 37 CFR 1.182 together with an appropriate petition fee." Meanwhile, MPEP 201.03 states in part that "Where there is no change of individual but an incorrect name was given, a petition under 37 CFR 1.182 should be filed requesting correction of applicant's name." As such, applicants reasonably would have been expected to recognize that a petition under 37 CFR 1.182 would be appropriate in this case. Since no such explicit petition under 37 CFR 1.182 was filed, it would be inappropriate to regard the papers filed on 03 July 2006 to have constructively constituted such a petition.

Since this case stands abandoned, further consideration of the merits under 37 CFR 1.497(d), or treatment of the submission filed on 28 September 2006 under 37 CFR 1.182, would not be appropriate at this time.

CONCLUSION

The declaration is **NOT ACCEPTED** under 37 CFR 1.497(d), without prejudice.

Petitioner's request for reconsideration (constructively, withdrawal) of the holding of abandonment is **DISMISSED**, without prejudice.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459